

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

TERRANCE M. DURHAM,

Plaintiff,

V.

**INFINITI FINANCIAL SERVICES,
NISSAN-INFINITI LT. and NISSAN
MOTOR ACCEPTANCE
CORPORATION,**

Defendants.

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CIVIL ACTION NO.

DEFENDANTS' NOTICE OF REMOVAL

Defendants Infiniti Financial Services (“IFS”), Nissan-Infiniti LT (“NILT”) and Nissan Motor Acceptance Corporation (“NMAC”) (collectively, “Defendants”) give notice of the removal of the state court civil action described below on the basis of diversity jurisdiction. As grounds for the removal, Defendants respectfully state the following:

I. INTRODUCTION

1. On December 19, 2019, Terrance M. Durham (“Plaintiff”) filed his Original Petition, numbered and styled as Cause No. 2019-89179, *Terrance M. Durham v. Infiniti Financial Services, Nissan-Infiniti LT and Nissan Motor Acceptance Corporation*, in the 333rd Judicial District Court of Harris County, Texas (the “Original Petition”).

2. In accordance with 28 U.S.C. § 1446(a), copies of all process, pleadings, orders, and other papers filed in the state court action and obtained by Defendants are attached hereto and marked as composite **Exhibit “A”** and incorporated herein by reference.

II. TIMELINESS OF NOTICE OF REMOVAL

3. Defendant NMAC was served on December 23, 2019, and is removing the case less than thirty days from the date of service. Accordingly, this notice of removal is timely.¹

III. JURISDICTION AND VENUE

4. This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332. This action may be removed to this Court by Defendants pursuant to 28 U.S.C. § 1441(b) because it is between citizens of different states, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1441(a). Defendants seek to remove this case to the Southern District of Texas, Houston Division. The 333rd District Court of Harris County, Texas is located within this District, and cases arising from Harris County are properly assigned to the Southern District of Texas, Houston Division.²

6. Pursuant to 28 U.S.C. § 1446(d), Plaintiff is being provided with the written notice of removal, and a copy of this Notice of Removal is being filed with the Harris County District Clerk for the 333rd District Court of Harris County, Texas.

¹ 28 U.S.C. § 1446(b). *See also Thompson v. Deutsche Bank Nat'l Tr. Co.*, 775 F.3d 298, 303 (5th Cir. 2014) citing *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-48, 119 S.Ct. 1322, 143 L.Ed. 448 (1999) (the federal removal and jurisdiction statutes “clearly provide that a defendant’s right to removal runs from the date on which it is formally served with process.”).

² *See* 28 U.S.C. § 124(b)(2).

V. BASIS FOR REMOVAL: DIVERSITY JURISDICTION

A. Complete Diversity Exists.

7. Plaintiff's state court action may be removed to this Court because it meets the requirements under 28 U.S.C. § 1332 (Diversity of Citizenship). Plaintiff is a citizen of Texas residing in Harris County.³

8. Defendant Nissan Motor Acceptance Corporation ("NMAC") is a California corporation with its principal place of business located at One Nissan Way, Franklin, TN 37067. A corporation is a citizen of the state where it is incorporated and the state where it has its principal place of business.⁴ Therefore, for diversity purposes, NMAC is a citizen of California and Tennessee.

9. Defendant Nissan-Infiniti LT ("NILT") is a domestic statutory trust organized under the laws of the state of Delaware with its principal place of business located at One Nissan Way, Franklin, TN 37067. The citizenship of a trust for purposes of diversity jurisdiction is the citizenship of the trustees of the trust. NILT, Trust is the sole trustee for NILT. NILT, Trust is a domestic statutory trust organized under the laws of the state of Delaware with its principal place of business located at One Nissan Way, Franklin, TN 37067. Therefore, for diversity purposes, NILT is a citizen of Delaware and Tennessee.

10. Infiniti Financial Services ("IFS") is a *division* of NMAC, not a separate entity from NMAC. NMAC is a California corporation with its principal place of business located at One Nissan Way, Franklin, TN 37067. A corporation is a citizen of the state where it is

³ See Original Petition, at ¶ 1; see also *Hollinger v. Home State Mut. Ins. Co.*, 654 F.3d 564, 571 (5th Cir. 2011) (For purposes of determining citizenship, "[e]vidence of a person's place of residence [] is prima facie proof of his domicile.").

⁴ 28 U.S.C. § 1332(c)(1); *Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 88-90 (2005).

incorporated and the state where it has its principal place of business. Therefore, for diversity purposes, IFS is a citizen of California and Tennessee.

11. Because Plaintiff is a citizen of Texas and none of the Defendants are citizens of Texas, complete diversity of the parties exists and removal is proper.

B. The Amount in Controversy Exceeds \$75,000.00.

12. In the Complaint, Plaintiff seeks “monetary relief over \$100,000 but not more than \$200,000.”⁵ Plaintiff’s basis for seeking such damages appears to be based on Plaintiff’s allegation that Plaintiff’s vehicle was seized by agents/police officers without proper notice.⁶ Due to seizure of the vehicle, Plaintiff alleges he has been wrongfully refused possession of the vehicle. Plaintiff also seeks declaratory judgment for actual damages, exemplary damages, attorneys’ fees, and court costs.⁷

13. Therefore, based on the value of the relief sought by Plaintiff in his Original Petition, the amount in controversy exceeds \$75,000.00.

VI. ADDITIONAL REQUIREMENTS

14. Plaintiff has not made a jury demand.

WHEREFORE, Defendants in the above-captioned action now pending as Cause No. 2019-89179 before the 333rd District Court of Harris County, Texas hereby remove this action to the United States District Court for the Southern District of Texas, Houston Division and respectfully request that the United States District Court assume jurisdiction of this action and enter such other and further orders as may be necessary to accomplish the requested removal and promote the ends of justice.

⁵ See Original Petition, at ¶ 6(a).

⁶ See Original Petition, at ¶ 11.

⁷ See Original Petition, at “Prayer.”

Respectfully submitted,

By: /s/ R. Dwayne Danner

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE AND NOTICE OF FILING

I certify that on January 22, 2020, the foregoing Notice of Removal was filed with the Harris County District Clerk, Texas, and that written notice of filing of the Notice of Removal was served upon Plaintiffs.

/s/ R. Dwayne Danner

R. Dwayne Danner

CERTIFICATE OF SERVICE

I hereby certify that on January 22, 2020, a copy of the above and foregoing was filed electronically with the Clerk of Court. Notice of this filing has been forwarded to all parties, by and through their attorneys of record by operation of the Court's electronic filing system or as indicated below.

**Via Certified Mail RRR
Tracking No. 9414 7266 9904 2142 7194 32
and Email**

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